Office Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 750

LODGE NO. 42 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, JOHN PARKHURST, WALLACE L. CLARK and CLYDE TURNER,
Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, and DISTRICT LODGE NO. 57 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE

For the sake of brevity, Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, will hereinafter be referred to as "Local 42"; District Lodge No. 57 of the

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers will hereinafter be referred to as "District 57"; the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers will hereinafter be referred to as "International Union." The Labor-Management Reporting & Disclosure Act of 1959, 73 Stat. 519, 29 U. S. C. 401 et seq., will be referred to as the "Act." The Petition for Writ of Certiorari will hereinafter be referred to as "Petition."

This cause was heard in the Federal District Court for the Middle District of Tennessee on the original complaint and on a motion to dismiss the complaint filed by respondents. The District Court dismissed the complaint because of improper venue and this decision was affirmed by the United States Court of Appeals for the Sixth Circuit.

The original complaint alleged that the plaintiff was an unincorporated association with its headquarters in Nashville, Tennessee; and that the individual members of Local 42 were likewise members of the International Union. The complaint also stated that the principal office of District 57 was in Chattanooga, Tennessee, and that the principal office of the International Union was in Kansas City, Kansas. The complaint expressly named and listed the other Local Lodges which comprised the membership of District 57.

Said original complaint affirmatively stated that the resolution to disaffiliate Local 42 from District 57 was adopted at a meeting in Chattanooga, Tennessee, and approved in Kansas City, Kansas, by the executive council of the International Union.

ARGUMENT.

The alleged violation (disaffiliation of Local 42 from District 57) did not occur in the Middle District of Tennessee.

Petitioners aver that venue was properly laid in the United States District Court for the Middle District of Tennessee by virtue of Section 102 of the Act, 29 U. S. C., Sec. 412. This section states in part:

> "Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The affirmative allegations of the original complaint show that the principal office of District 57 is located in Chattanooga, Tennessee (Eastern District), and the principal office of the International Union is located in Kansas City, Kansas. These facts are admitted on pages 9 and 10 of the petition.

The affirmative allegations of the original complaint likewise show that no violation of the Act occurred in the Middle District of Tennessee because the resolution to disaffiliate Local 42 was adopted in Chattanooga, Tennessee, and approved in Kansas City, Kansas. These facts are expressly admitted on pages 12 and 13 of the petition. Respondents' position on this point is in accord with **Wirtz v. Cascade Employers Association, Inc., etc.**, and **Wirtz v. Harvey Aluminum (Incorporated) et al.**, 219 F. Supp. 84 (D. C. 1963).

General venue statutes are not applicable in the face of a specific venue statute.

Petitioners also allege proper venue by virtue of the general venue statutes contained in 28 U. S. C., sections 1391

1392 and 1393. Respondents would respectfully show that the above-cited general venue statutes are not applicable to this case because a special venue statute (section 102 of the Act) pertains to this particular type of action.

In **Fourco Glass Co. v. Transmirra Prod. Corp.**, 353 U. S. 222 (1957), the United States Supreme Court held:

> "We think it is clear that Section 1391 (c) is a general corporation venue statute, whereas section 1400 (b) is a special venue statute applicable, specifically, to all defendants in a particular type of actions, i. e., patent infringement actions. In these circumstances the law is settled that 'However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.'"

> "We hold that 28 U. S. C., Section 1400 (b), is the sole and exclusive provision controlling venue in patent infringement actions, and that it is not to be supplemented by the provisions of 28 U. S. C., section 1391 (c)."

(353 U. S. at pp. 228, 229.)

The questions presented by the Petition are not of the nature, type or character which, pursuant to Rule 19 of the Supreme Court Rules, should be considered by the Court.

The Petition shows on its face that the Court of Appeals for the Sixth Circuit did not render a decision in conflict with the decision of another Court of Appeals on the same matter; did not decide an important state or territorial question; did not decide an important question of Federal law not previously settled by the Supreme Court; did not decide a federal question in a way to conflict with appli-

cable decisions of the Supreme Court, and did not decide any question of a nature calling for an exercise of the Supreme Court's power of supervision.

The petition affirmatively shows that it does not concern any of the matters enumerated in Rule 19.

CONCLUSION

In light of the above-cited authorities the Petition should be denied.

Respectfully submitted,

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Certificate of Service

I, Cecil D. Branstetter, one of the Attorneys for the Respondents, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and District Lodge No. 37 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and a member of the Bar of the Supreme Court

of the United States, hereby certify that on the [illegible] day of January, 1964, I have served copies of the within Brief for the Respondents on Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, John Parkhurst, Wallace L. Clark and Clyde Turner, by mailing said copies in a duly addressed envelope, postage duly prepaid to their Counsel of record, James C. Havron and Claude Callicott, 543 Nashville Bank & Trust Building, Nashville, Tennessee, 37201

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